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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/871,815	06/04/2001	Kazuo Konishi	04329.2576	1967

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EXAMINER

MISLEH, JUSTIN P

ART UNIT	PAPER NUMBER
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2612

DATE MAILED: 01/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/871,815

Applicant(s)

KONISHI ET AL.

Examiner

Justin P. Misleh

Art Unit

2612

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12/22/05 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Attached Response.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Response to Arguments

Applicant's arguments filed December 22, 2005 have been fully considered but they are not persuasive.

Applicant argues, "Furthermore, in FIG. 3, Sethuraman et al. teaches the processing performed by the function rclnitGop. (Col. 6, lines 6-7.) However, step 302 of FIG. 3 teaches the processing of I frames and processing the I frames differently depending on whether the I frame is the first frame in a video sequence or whether it is not the first frame in the video sequence. (Col. 6, lines 6-42.) These teachings cannot constitute a teaching of 'a mode selector to select a first shoot mode for obtaining a high quality motion video file or a second shoot mode for obtaining a compression-encoded motion video file suitable for real time transmission via the network.'" (see Response page 3)

Applicant additionally argues, "determination of whether an I frame is the first frame or not cannot constitute a teaching or suggestion of the claimed 'mode selector.'" (see Response page 4)

The Examiner respectfully disagrees with Applicant's position. Step 302 of Figure 3 (Sethuraman et al.) actually functions as the claimed "mode selector" because, as even admitted by Applicant, step 302 of Figure 3 processes "the I frames differently depending on whether the I frame is the first frame in a video sequence or whether it is not the first frame in the video sequence." Applicant's interpretation of Step 302 of Figure 3 (see Response page 3) is in direct agreement with the Office Action. The Office Action (page 3) specifically indicates that obtaining the "high quality motion video file" corresponds to the "YES result of Step 302 ... wherein I frames are generated with maximum freeze time and quality parameters" and that

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obtaining the “compression-encoded motion video file” corresponds to the “NO result of Step 302 ... wherein P frames are generated with P quality parameters.” Therefore, Applicant and Examiner appear to agree that Step 302 chooses between the YES path and the NO path.

Even if Step 302 of Figure 3 were somehow construed as to not select between a first processing path and a second processing path, which is not true, Figure 3 would inherently have to provide selection between one of the processing paths. Notwithstanding, the claim language is written broadly enough such that Sethuraman et al. is applicable.

Claim 1 requires therein, “a mode selector to select a first shoot mode for obtaining a high quality motion video file or a second shoot mode for obtaining a compression-encoded motion video file suitable for real time transmission via the network.”

The Examiner notes that, according to the claim language, the “second shoot mode” ONLY requires obtaining a “compression-encoded motion video file” and the “first shoot mode” ONLY requires obtaining a “high quality motion video file.” Claim 1 is written broadly enough such that there are no claimed differences between a “compression-encoded motion video file” and a “high quality motion video file.” In other words, Claim 1 does not specify the determining factors in determining whether or not a motion video file is even a “high quality motion video file.” Furthermore, Claim 1 does not even distinguishing the “compression-encoded motion video file” by indicating such a file is a low quality motion video file.

For the above reasons, the Examiner submits that the outstanding rejections are proper and will be maintained.


NGOC-YEN VU
PRIMARY EXAMINER